

REMARKS

Claims 1-5 have been rejected as reciting subject matter obvious over certain teachings contained in the Kline ('542) patent in view of further teachings contained in the Hudson patent ('786). The Examiner contends that the gel used in the Hudson glass blocks could be incorporated in the Kline plastic block and, if so incorporated, would result in the invention recited in Claim 1. Moreover, the Examiner contends that the Hudson gel inserted in the Kline block and forming a layer against one opposed surfaces would be the equivalent of the sheet of material recited in paragraph (b) of Claim 1. Such proposed combination of teachings to render Claim 1 obvious is strongly contested for the following reasons.

It is noted that the teachings in the Kline patent are insufficient to either anticipate or render obvious the present invention recited in Claim 1. To meet the primary missing element, a sheet of material, the Examiner contends that the gel inserted into the Hudson glass block when the block lies on its side to form a layer against one of the surfaces is equivalent to the recitation of "a sheet of material". As set forth in column 3, lines 38-42 of the Hudson patent, the gel "sticks" to the interior faces of the block. It is not free standing nor is it capable of being free standing. Instead, it is a gel which forms a layer upon a supporting surface. As clearly set forth in the specification of the present application, the "sheet of material" recited in paragraph (b) of Claim 1, is a free standing element which requires no supporting media to perform its function. (Note page 13, line 19 to page 14, line 3 of the specification).

It may also be pointed out that the purpose of the presently recited sheet of material is that

of reducing solar radiation through the plastic block. The purpose of the Hudson gel is that of providing fire resistance. Not only is the degree of fire resistance desired a function of the thickness of the gel (see column 3, lines 3-5) but the decision of whether to coat one or both opposed surfaces is a function of the use of the block and the fire resistance desired (see column 3, lines 8-12). There is absolutely no teaching in this patent of using the layer of gel for the primary purpose of filtering solar radiation.

In any rejection based upon obviousness, the courts have clearly held that there must be some teaching or incentive in the prior art to make a proposed combination necessary to support an obviousness rejection. In the present situation, the Examiner is attempting to combine certain structure attendant a plastic block with a feature attendant a glass block. When considering that part of the purpose of the present invention is that of reducing transmission of solar radiation through a plastic block, one cannot possibly come to the conclusion that it would be obvious to use a fire retardant gel layered on one or both opposed surfaces of a hollow plastic block to achieve such result. It is also to be noted that there is no teaching nor suggestion that the fire retardant gel of Hudson is either transparent or translucent. Thus, whether it would or would not reduce but not preclude transmission of solar radiation through the block is highly speculative and probably primarily a function of the thickness of the layer of gel. These functional and structural unanswered queries are hardly of a scope and purpose sufficient to support a rejection under 35 USC § 103.

One must therefore come to the inescapable conclusion that if the Hudson gel were

inserted in the Kline plastic block, one would not have the “sheet of material” recited in Claim 1. Additionally, the purpose of the Kline patent is that of providing a source of light radiating from within the plastic block and such radiation would probably be precluded were the Hudson gel coated on opposed sides. Thus, the function and purpose of the primary reference would be destroyed if the proposed combination were made. Such destruction has been held by the courts to be inimical to a rejection under 35 USC § 103.

For any and all of the above reasons, it is respectfully requested that the rejection of Claim 1 under 35 USC § 103 be withdrawn. As Claim 1 is allowable, Claims 2-5 depending therefrom are also allowable.

Claims 20-22 have been rejected as reciting subject matter obvious over certain teachings in the Kline (‘532) patent in view of further teaching contained in the Hudson patent (‘786). This rejection must fail for the reasons set forth below.

Claim 21 recites in paragraph (b) “a sheet of material”. For reasons set forth above, neither the Kline patent nor the Hudson patent teach or suggest the use of a sheet of material within a transparent block. Also, as set forth above, the layer of gel attached to and supported by one or both opposed sides of the block do not constitute a sheet of material as defined and used in the present specification. To contend that such a non free standing layer is equivalent to a sheet of material as defined in the present specification is incompatible with the court construed requirements for a rejection under 35 USC § 103.

Accordingly, withdrawal of the rejection of Claim 20 under 35 USC § 103 is respectfully requested. With such withdrawal, Claims 21 and 22 depending from Claim 20 are also allowable.

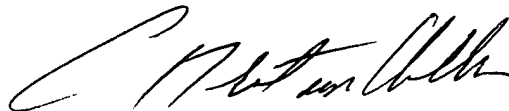
Allowance of Claims 13-19 as filed is noted.

Claims 6, 9 and 23 have been rewritten to incorporate the subject matter of the claim from which each depends. Accordingly, Claims 6-12 and 23-26 are now allowable.

In view of the amendments to the objected-to claims, the detailed discussion of the extent of pertinent teachings contained in the Kline ('542) and Hudson patents, the correlation of the subject matter recited in the rejected claims with such teachings and the remaining allowed claims, it is believed that the application is in condition for allowance, which allowance is respectfully requested.

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read "C. Robert von Hellens", is written over a horizontal line.

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